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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/856,300	05/21/2001	Ingbritt Magnusson	52297.64180-	6567
466	7590	01/23/2004	EXAMINER	
YOUNG & THOMPSON 745 SOUTH 23RD STREET 2ND FLOOR ARLINGTON, VA 22202			PIERCE, JEREMY R	
			ART UNIT	PAPER NUMBER
			1771	

DATE MAILED: 01/23/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/856,300

Applicant(s)

MAGNUSSON, INGBRITT *ey*

Examiner

Jeremy R. Pierce

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 26 August 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 22-41 and 43 is/are pending in the application.
- 4a) Of the above claim(s) 30-41 and 43 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 22-29 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. §§ 119 and 120

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☒ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.  
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_ 6) ☐ Other:

## **DETAILED ACTION**

### ***Response to Amendment***

1. Applicant's amendment filed on August 26, 2003 has been entered. Claims 22 and 33 have been amended. Claim 42 has been cancelled. Claims 22-41 and 43 are currently pending, with claims 30-41 and 43 withdrawn from consideration as being drawn to a non-elected invention.

### ***Election/Restrictions***

2. Applicant traverses the restriction requirement set forth in the last Office Action, which stated the inventions lacked the same or corresponding special technical feature. Applicant has now amended independent claims 22 and 33 so that all independent claims recite "a loop-free, open structure suitable for the male component of a hook and loop fastener to fasten thereto." The inventions now share the special technical feature of a nonwoven fabric having a loop-free, open structure. However, the restriction is maintained and now made FINAL for the reasons set forth below.

3. The inventions listed as Groups I, II, and III in section 2 of the last Office Action do not relate to a single general inventive concept under PCT Rule 13.1 because, under PCT Rule 13.2, they lack the same or corresponding special technical features for the following reasons: The special technical feature of a nonwoven fabric having a loop-free, open structure is anticipated by U.S. Patent No. 4,999,232 to LeVan, as set forth in section 8 of the last Office Action. Accordingly, the special technical feature linking the three inventions does not provide a contribution over the prior art, and no single general inventive concept exists. Therefore, restriction is appropriate.

4. This application contains claims 30-41 and 43 drawn to an invention nonelected with traverse. A complete reply to the final rejection must include cancellation of nonelected claims or other appropriate action (37 CFR 1.144) See MPEP § 821.01.

***Claim Rejections - 35 USC § 102***

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 22, 23, 25, 27, and 29 are rejected under 35 U.S.C. 102(b) as being anticipated by LeVan (U.S. Patent No. 4,999,232).

LeVan disclose a stretchable fibrous batting comprising bicomponent fibers functional fibers and binder fibers (column 2, lines 23-33). The fabric is created by carding (column 4, line 20) and needle-punching (column 3, line 61). The needling adds increased density to the nonwoven fabric (column 3, line 60) and no recitation is made in LeVan that loops are formed. With regard to claim 23, the functional fiber may be formed of polyesters or polyolefins (column 2, lines 49-62). With regard to claim 25, the functional fibers are side-by-side and spiral upon heating (column 2, lines 43-49). With regard to claims 27 and 29, the binder fibers may comprise between 10 and 20% by weight of the fabric and may themselves be bi-component fibers (column 4, lines 53-57).

***Claim Rejections - 35 USC § 103***

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7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 24, 26, and 28 are rejected under 35 U.S.C. 103(a) as being unpatentable over LeVan in view of Kwok (U.S. Patent No. 5,618,364).

With regard to claims 24 and 26, LeVan do not teach using two different types of functional fibers, although it is cited that the functional fibers may be curled, spiraled, or crimped (column 4, line 68 –column 5, line 1). Kwok teaches that improved loft may be achieved in polyester fiberfill when using crimped fibers along with helical fibers in a nonwoven fabric (column 3, lines 1-14). It would have been obvious to one having ordinary skill in the art to include crimped polyester fibers along with the helical ones in the nonwoven fabric of LeVan in order to improve the loft of the fabric, as taught by Kwok. With regard to claim 24, Kwok teaches the spiral fiber has a denier of 9, whereas the crimped fiber denier varies (column 8, lines 1-22). With regard to claim 28, Kwok teaches that the crimped staple fiber may comprise 40% of the fabric and the helical fiber may comprise 30% of the fabric (column 3, lines 1-14). In such an instance, the spiral fiber would comprise 43% of the functional fibers.

### ***Response to Arguments***

9. Applicant's arguments filed August 26, 2003 have been fully considered but they are not persuasive.

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10. Applicant argues that the references do not disclose or suggest that a nonwoven fabric includes a surface for fastening the male component of a hook and loop fastener system that has a loop-free open structure suitable for the male component of the hook and loop fastener to fasten thereto. However, the recitation that the fabric be used as the female component of a hook and loop fastener is the recitation of an intended use. Language that suggests or makes optional but does not limit a claim to a particular structure, such as a statement of intended use, does not limit the scope of a claim. See MPEP § 2106(II)(C). LeVan discloses the structural limitations of a needled, nonwoven, loop free fabric. Therefore, the fabric of LeVan would be suitable for the male component of a hook and loop fastener to fasten thereto.

11. Applicant argues that LeVan disclose that batts may be formed using binder fibers or by needle-punching, not a combination of the two. Applicant's assertion is not accurate. LeVan discloses, "Desirably, however, in practice, the differential shrinkage is induced after stabilization of the batt, e.g. with a low level of heat (enough to provide only some slight degree of curl in the fibers sufficient to provide cohesion and stability, and possibly to activate any binder material, for instance in the form of binder fibers) and/or pressure to densify the batt or by needle-punching." Column 3, lines 54-61. Because LeVan uses "and/or" to combine needling and binder fibers to form the batt, it is clear that the two may be used together.

12. Applicant argues LeVan discloses that any heating step is performed at a temperature that does not melt or otherwise degrade the fibers. The passage Applicant

refers to (column 4, line 66 –column 5, line 2) discusses the functional fibers, not the binder fibers.

13. Applicant argues that LeVan does not disclose a loop-free open structure suitable for the male component of a hook and loop fastener to fasten thereto.

However, attaching a male component of a hook and loop fastener is an intended use of the fabric. LeVan meets all structural limitations of the claim as set forth in section 6 above.

14. Applicant argues that Kwok does not disclose a loop-free open structure suitable for the male component of a hook and loop fastener to fasten thereto. However, Kwok was not used to show this feature of the claims. Kwok was used to teach including crimped polyester fibers along with the helical ones in the nonwoven fabric of LeVan in order to improve the loft of the fabric.

15. Applicant argues that Kwok and LeVan teach using resin product on the batt and this would teach away from having an open structure. However, Applicant has not defined "open structure" to preclude any type of resin on the batting. Also, any addition of resin is not precluded by the claims. In addition, the addition of resin to LeVan is only suggested, and not disclosed as a necessity. LeVan also teaches that binder fibers may act to bond the fabric.

### ***Conclusion***

16. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jeremy R. Pierce whose telephone number is (571) 272-1479. The examiner can normally be reached on Monday-Thursday 7-4:30 and alternate Fridays 7-4.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached on (571) 272-1478. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (571) 272-0994.

JRP  
JRP

*Elizabeth M. Cole*  
ELIZABETH M. COLE  
PRIMARY EXAMINER